

## CLAIM OF MICHIO IWAMOTO

[No. 146-35-408. Decided May 27, 1955]

## FINDINGS OF FACT

1. This claim, in the amount of \$506, was received by the Attorney General on February 2, 1949. It involved the loss through sale of a stove, refrigerators, sofa, chairs, table, rugs, sewing machine, and vacuum cleaner, and the loss of a carpet which was stored. Claimant has also asked for unemployment compensation in the amount of \$256. Claimant, at the time of her evacuation, was married to Kazumi J. Iwamoto. The property involved is the community estate of claimant and her husband who signed a release authorizing his wife to claim for the whole. Kazumi J. Iwamoto filed a claim (No. 146-35-560) for other property than that involved here and an award was made on February 2, 1950. Claimant was born in Hanford, California, on May 15, 1916. She and her husband were both born of Japanese parents. At no time since December 7, 1941, has either claimant or her husband ever gone to Japan. On December 7, 1941, and for some time prior thereto, claimant resided at 422½ Breed Street, Los Angeles, California, and was living at that address when she and her husband were evacuated on May 16, 1942, under military orders pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to Manzanar Relocation Center, Manzanar, California.

2. Shortly before the claimant was evacuated, she sold for \$110 all of the above-mentioned property, with the exception of the carpet. The property sold then had a fair value of \$333. Her act was reasonable in the circumstances.

3. Claimant stored the carpet, which was reasonable in the circumstances. On her return from the relocation



center, she discovered that it had been removed and she never recovered it. Its fair value was \$15.

4. Claimant worked in a beauty shop, but lost her job soon after the outbreak of war. She notified the California State Unemployment Insurance Office of her unemployment and she was told that she would receive \$16 a week for 20 weeks (\$320). She received about four checks before evacuation and one thereafter, but no more. She did not contest the matter of the stoppage of unemployment benefit payments.

5. The reasonable value of claimant's property at the time of its sale for \$110 was \$333, with a resulting loss of \$223, which together with the loss on the stored carpet, \$15, makes a total loss of \$238 not compensated for by insurance or otherwise.

#### REASONS FOR DECISION

The proposed adjudication was submitted to the Japanese-American Citizens League which filed a brief as *amicus curiae*. The arguments there raised in respect to unemployment insurance benefits have been given careful consideration. Claimant was eligible to claim, as was her husband, and, her husband having signed a release of all his interest in the community property, claimant may under local law claim for the whole. *Toshiko Usui, ante*, p. 112. Her husband filed a claim, No. 146-35-560, but on other property, and an award was made to him on February 2, 1950.

On the facts found in paragraph 2, the loss is allowable. *Toshi Shimomaye, ante*, p. 1.

On the facts found in paragraph 3, the loss is allowable. *Akiko Yagi, ante*, p. 11.

The claimant claimed \$256 for loss of State unemployment insurance benefits. Claimant, who had been employed for some time prior to her evacuation, was receiving unemployment insurance payments from the State of California which were terminated shortly after her evacuation, presumably on the ground that she was no



longer available for work, continued availability being a condition upon which her right to receive such payments depended. She seeks compensation for the loss of the unemployment payments of which she was thus deprived.<sup>1</sup>

The money that claimant expected to receive was not her property, for the conditions which would have entitled her to receive it were never met. Her evacuation brought about a condition under which such payments did not become due, such as might well have occurred by reason of, e. g., her reemployment, in which case there would have been no thought of loss. Claimant's case must depend upon the speculative assumption that, but for her evacuation, she would have remained unemployed but able and available for work throughout the period in which she might have received the benefit payments. Such payments, obviously, were intended to do no more than provide her with the bare essentials of subsistence while she was seeking gainful employment. Those she received from the Federal Government upon entering the Relocation Center. Accordingly, upon the assumption that she could not have found gainful employment, her evacuation cost her nothing in respect of her earning capacity. Looked at realistically, all that she lost in this regard was the opportunity, during the period in which she might have received such payments from the State, to seek employment that would have paid her the amount thereof and more. Plainly, loss of such opportunity is not compensable under the Federal Act, if for no other

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<sup>1</sup> See the basic California Act of June 25, 1935, Stat. 1935, ch. 352, p. 1226, as amended. It will be unnecessary to notice here more than one of the amended sections. By an amending Act of 1939 (ch. 674, p. 2146) a new section 57 was inserted in the California law which provided that an employed person shall be eligible to receive benefits only if a claim has been made in accordance with the regulations, the person has registered for work and thereafter continued to report at a public employment office or other approved place, has been unemployed for a "waiting period" of 2 weeks, has during his base year earned wages for employment by employers of not less than \$300 and (cf. § 51 of the original 1935 law) :

"(c) He is able to work and available for work."



reason than that it forbids consideration of a claim for loss of "anticipated earnings." Cf. *Takeshi Sakurai, ante*, p. 346.

It was pointed out in the *Sakurai* case, *supra*, that there may be compensable claims for losses of employment contracts. So, also, there might be situations in which losses of rights to unemployment insurance benefits could be compensated. The test in either case would be the same. Did the claimant, due to evacuation, lose "property" that had either an actual or hypothetical market value? Unlike the claimant in that case, the present claimant cannot contend that any right of claim against the State was lost. Rather the contention here must be that claimant was deprived of opportunity to acquire valid claims against the State insofar as anticipated unemployment benefits are concerned. So far as we are informed, claimant's statutory rights in this regard were no different during and after the period of her exclusion than they had been at the time it began. Unlike cases in which life insurance policies lapsed due to the inability of claimants to pay their premiums during the period of their exclusion, with the consequence that they were out of pocket in respect of loading charges not fairly allocable as part of the cost of risk coverage already afforded, and which would have to be paid again in order to acquire new insurance (see *Noboru Sumi, ante*, p. 225), there was not, so far as we are informed, any lapse in the limited protection afforded by the State in respect of this claimant's risks of unemployment; and claimant was not required to pay any money to maintain her position with reference to such rights that she would not have had to pay if she had not been evacuated, or if she had been ineligible to receive payments during the period of her exclusion for other reasons, e. g., illness.

It is true, of course, that a person quite naturally feels that he has lost something that he expected to obtain but did not, e. g., expected commission on an anticipated sale that fails due to a fluke, or an anticipated luxury item

that can not be bought because the money set aside for it has to be used to defray the expense of an accident. Although such misadventures are sometimes compensated for by awarding damages against persons wrongfully causing them, this is not the kind of relief that is afforded by the Federal Act, as shown by both its language and its legislative history. See *Mary Sogawa, ante*, p. 126. The claim for loss of the unemployment insurance payments that claimant anticipated certainly is not a claim for "loss of \* \* \* personal property" within the meaning of those words as used in that Act because claimant had never gained a "property" right in them. Accordingly, this item of claim must be denied.